



EPA rejects "confidential" designations in TSCA submissions

Alston & Bird LLP

Orlyn O. ("Skip") Lockard, III

USA

February 21 2011



Author page »

The Toxic Substance Control Act of 1976 ("**TSCA**") imposes various data reporting obligations on manufacturers and importers of chemical substances. Under **TSCA** Section 4, for example, **EPA** may require manufacturers of existing chemicals to conduct tests "to develop data with respect to the health and environmental effects" of existing chemicals. Similarly, **TSCA** Section 8 may obligate manufacturers to notify **EPA** of new data suggesting that a chemical poses risks to human health or the environment. Thus, in many cases, **TSCA submissions** to **EPA** include health and safety data.

Companies have long been permitted to designate sensitive and proprietary information in such **EPA submissions** as **confidential** business information ("CBI"). CBI designations have generally prevented disclosure of the specific identities of chemicals in such reports. Among other legitimate considerations, disclosure of precise chemical names can potentially help competitors "reverse engineer" the submitting company's manufacturing processes and/or product compositions.

According to a February 10 press release, however, **EPA** has rejected CBI designations as to the chemical identities of 14 substances described in numerous **TSCA submissions**. While implicating only a relatively small number of substances, this development is the latest in a series of **EPA** actions aimed at increasing "transparency" in the context of health and environmental data submissions.

In 2010, for example, **EPA** announced a general policy of reviewing CBI designations as to chemical identities in new health and safety studies. **EPA** has also asked companies to declassify information previously submitted under CBI designations, and to reduce the number of CBI claims going forward. Critically, the agency's review of CBI designations is not just "proactive" in scope; **EPA** has also launched a review of approximately 16,000 CBI-designated chemical identities in past submissions.

Setting aside the policy arguments offered in support of **EPA's** ongoing shift toward greater "transparency," increased scrutiny of CBI designations seemingly ratchets up the already-substantial toxic tort and environmental litigation risks for companies complying with **TSCA** and other federal reporting requirements. Put simply, publicly linking human health and environmental data in **TSCA submissions** to particular chemicals can only help Plaintiffs' counsel looking for the new litigation targets.

Tags USA, Environment, Alston & Bird LLP

If you are interested in submitting an article to Lexology, please contact Andrew Teague at ateague@lexology.com.

"Lexology is a useful and informative tool. I keep copies of relevant articles and often forward them to colleagues. Although I do not know all of the authors/firms, by reading their articles I do gain an understanding of..."



Don Sangster
Legal Department Administrator
Jovian Capital Corporation

© Copyright 2006-2011 Globe Business Publishing Ltd | [Disclaimer](#) | [Privacy policy](#)